a finding of non-impairment in Texas.[46] My own calculations, using the same data, revealed that switch-based competitors had targeted specific wire-centers, rather than MSAs as a whole. For example, in four of the five Texas MSAs for which SBC sought a finding of no impairment, its UNE-L CLECs[47] were providing service to at least some mass-market customers (using SBC's definition and data) in less than 40% of the wire centers in each of those MSAs. In the remaining MSA, Dallas – Fort Worth – Arlington, UNE-L CLECs were providing service to at least some mass-market customers (using SBC's definition and data) in only 42% of the wire centers. This falls far short of ubiquity. I also found that *the total mass-market UNE-L as a whole as a percentage of SBC retail lines was only 0.3%* in the five Texas MSAs at issue in the state impairment proceeding.[48]

46. I also examined the pattern of individual switch-based CLEC mass-market entry in the five Texas MSAs, again based on SBC's own data. I found that no UNE-L CLEC provided mass-market service in more than 40% of the wire centers in any of the SBC five MSAs. Three of the UNE-L CLECs that SBC counted toward the retail trigger provided mass-market service in 15% or less of the wire centers in

[46] *See* SBC Comments, Attachment A-TX, p. 2, for the individual coverage ratios for each of the five MSAs.

[47] SBC's own coverage calculation reflects data for UNE-L CLECs only.

[48] I reported these findings in my March 19, 2004 Rebuttal Testimony in PUCT Docket No. 28607. Attachment TLM-Rebuttal-7 to that testimony provided the calculations underlying these conclusions.

any of the five MSAs, and three more provided service in less than 25% of the wire centers in any MSA.[49]

47. This information calls into question SBC's claim that competitors would enter on an MSA-wide basis to achieve economies of scale and scope with their switches and demonstrates the danger of eliminating access to UNE switching throughout an MSA or larger geographic area based on what is at best data showing limited, targeted entry, primarily to serve business customers. The fact that UNE-L entry is focused primarily on the densest urban wire centers tends to confirm that it does not represent true "mass-market" competition. Instead, the pattern of individual CLEC entry revealed in SBC's data is far more consistent with what one would expect if the CLECs in question were providing incidental service via analog loops to enterprise-level business customers—which is precisely what the record indicated to be the case for many of the claimed triggering CLECs in Texas and elsewhere.[50]

48. I observed similar discrepancies between the picture that SBC sought to portray in other state proceedings (using similar coverage calculations) and the actual extent of the mass-market penetration that SBC's own data—taken as face value—revealed. In Michigan, for example, SBC asserted that UNE-L CLECs were

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[49] Exhibit 11 to this Reply Declaration reproduces Attachment TLM-Rebuttal-8 to my Texas Rebuttal Testimony, which is a series of footprint maps for the individual CLECs that SBC claimed as triggers, demonstrating the lack of ubiquitous coverage throughout MSAs.

[50] *See* Exhibit 8 hereto and the discussion in paragraphs 24 through 34 of my October 4, 2004 declaration.

serving mass-market customers in wire centers that accounted for ***BEGIN PROPRIETARY END PROPRIETARY*** of the retail lines in the seven MSAs for which SBC sought a finding of no impairment.[51] Yet, its own data showed that those same CLECs accounted for at most 4.14% of the total mass-market lines in the seven Michigan MSAs at issue.[52]

49. SBC's data on the number of stand-alone mass-market loops allegedly served by switch-based CLECs suffer from much the same flaw. SBC provided this statistic—but not the percentage of retail lines in wire centers served by alleged triggering CLECs—in its summary of "key supporting data" from the California state impairment proceeding.[53] The numbers, in some cases, look large, until one recalls that California is the most populous state in the union. The total alleged mass-market UNE-L loops amount to less than one per cent of the SBC retail lines in those seven MSAs.[54] This minuscule penetration level is far less than the level of competitive entry that the Commission previously deemed too small to support a national finding of non-impairment for mass-market switching.[55]

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[51] *See* SBC Comments, Attachment A-MI, p. 3, for a presentation of the coverage percentages for the individual MSAs.

[52] The supporting data for this comparison appeared in Exhibit ___ (TLM-11) to my February 10, 2004 Response Testimony in Michigan Case No. U-13796.

[53] SBC Comments, Attachment A-CA, p. 3.

[54] This calculation uses data from CA Hopfinger Direct, Proprietary Attachment CH-7.

[55] *TRO*, ¶ 438.

50. I have not had an opportunity to examine the data underlying SBC's claims in all thirteen of the states for which it provided summaries, nor have I had the opportunity to review the data underlying the similar claims presented for other ILECs in the *UNE Report 2004*. Based on the consistent pattern in the states for which I did review such data,[56] I would expect that the statistics cited by SBC and the other ILECs suggest a misleadingly high level of competition from switch-based CLECs for mass-market customers. This is especially true because the substantial majority of competitors that the ILECs counted toward the retail trigger in state proceedings served only business customers and have not indicated any intention of serving the residential customers who make up the bulk of the mass market, as defined by the Commission in its *Triennial Review Order*.[57]

### B. The Other Four Data Points Identified by SBC Are Generally Irrelevant to the Measurement of Mass-Market Competition

51. As I noted above, SBC admitted in the state proceedings that its data on CLEC switches, CLEC collocations, ported numbers and CLEC NXX codes were not limited to situations in which the CLEC in question used the switch, the

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[56] In addition to Texas and Michigan, I reviewed SBC's "coverage" calculations in California and Illinois and reviewed similar data in the market definition phase of the Ohio mass-market switching impairment proceeding (Public Utilities Commission of Ohio Case No. 03-2040-TP-COI). Without exception, I found that SBC's claims concerning the percentage of retail lines in wire centers in which switch-based CLECs allegedly served mass-market customers provided a grossly exaggerated picture of the actual extent of CLEC penetration in the mass market, even accepting SBC's data at face value.

[57] *See* Exhibit 13 to this Reply Declaration for a summary of the limited extent to which the ILECs' trigger candidates in state impairment proceedings actually serve residential customers.

collocation, the ported number or the NXX code to serve mass-market customers.[58] Thus, at best, these data show the presence of CLECs providing some kind of service to some kind of customers. As one of SBC's own witnesses testified, "I do not assert that all of these switches are currently being used to provide mass-market service, but many of them *likely* are...."[59] Other than such utter speculation, SBC provided absolutely no basis for believing that most of the CLECs in question actually deploy their facilities to serve *any* mass-market customers—especially residential local exchange customers.

52. The ILECs' *UNE Report 2004* seems to concede the lack of residential service provided via these CLEC switches. It notes that the number of stand-alone analog loops served via non-ILEC switching remains largely unchanged from the number as of the record in the *Triennial Review* proceeding.[60] It further concedes that the "vast majority of these mass-market lines were being provided to small business customers."[61]

53. The *UNE Report 2004* attempts to explain the predominance of business service via stand-alone analog loops by referencing the higher revenues available from

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[58] *See* footnote 45 above.

[59] TX Loehman Direct at 26 (emphasis supplied).

[60] *UNE Report 2004* at II-42.

[61] *Id.* at II-41 – II-42.

small business, as opposed to residential, customers.[62] Even if this were the correct explanation, it would tend to support a subdivision of the mass market into two categories: one for residential customers and the other for small business customers. There is little evidence of actual deployment for the residential segment of the mass market. And, as I noted above, it is far from clear that the bulk of stand-alone analog loops are being used to provide retail service to true mass-market small business customers. Instead, many of these loops may represent incidental service provided to enterprise-level customers.

54. My review of SBC's backup data in state impairment proceedings provided ample grounds for skepticism concerning the relevance of these four indicators to the extent of mass-market competition. For example, the workpaper that MCI obtained in California concerning SBC's ported numbers data shows, by wire center, how many ported numbers were attributed to each individual carrier. I performed a spot check concerning a carrier that appears prominently in SBC's workpaper ***BEGIN PROPRIETARY END PROPRIETARY***, a company that SBC indicated to have ported hundreds and in some cases thousands of lines in certain SBC wire centers. This CLEC's Web site describes its target customer base as being "composed primarily of medium-sized and large businesses, institutions, and other communications-intensive users."[63] Clearly,

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[62] *Id.* at II-42.

[63] ***BEGIN PROPRIETARY END PROPRIETARY***

this description does not relate to the provision of local service to mass-market customers—and, not surprisingly, the company in question did not appear on SBC's list of identified triggering companies, despite the thousands of ported numbers for this carrier included in SBC's "key data" for California.

55. Other simple cross-checks (that SBC itself did not perform) revealed that the ported number data often had very little to do with mass-market local exchange competition. SBC's own data in Texas[64] showed that the quantity of ported numbers vastly outstrips the combined total of all stand-alone voice-grade loops (not just SBC's identified mass-market loops) and cable telephony lines (measured by residential E911 listings). For example, in the Houston – Baytown – Sugar Land MSA, the total quantity of ported numbers was over *43* times the combined total of SBC's identified mass-market loops plus cable telephony lines. In the Dallas – Fort Worth – Arlington MSA, the total quantity of ported numbers was nearly six times the combined total of stand-alone voice-grade loops and cable telephony lines and more than eight times the combined total of SBC's identified mass-market loops plus cable telephony lines. This pattern repeated throughout the state.[65]

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[64] The data appeared in TX Loehman Direct, Confidential Attachment JRL-5.

[65] The same pattern also occurred in other states. For example, in the Detroit – Warren – Livonia MSA in Michigan, the total quantity of ported numbers that SBC identified was nearly triple the combined total of stand-alone voice-grade loops and cable telephony lines and more than eight times the combined total of SBC's identified mass-market loops plus cable telephony lines.

56. Furthermore, there were many wire centers (over 40% of all wire centers with ported numbers) for which SBC reported positive quantities of ported numbers without any stand-alone voice-grade loops or cable telephony lines. In combination with the overall mismatch in quantities, this fact demonstrates that ported number data are of little use in determining the geographic market definition or the extent of actual deployment for an impairment analysis of mass-market switching.

57. SBC's reliance on NXX data is equally misplaced. The document that SBC filed in California providing a proprietary listing of the NXX code data referenced in the testimony of its witness, Mr. Hopfinger, carries a telling footnote: "Note 1 - This list reflects CLECs known to SBC-CA to have NXX codes assigned in CA. *SBC-CA does not claim all are local exchange service providers.* MSA designation is based on physical location of the switch, switches may also be serving customers outside the shown MSA."[66] (Emphasis added.) The Commission should ignore the NXX data entirely because these data cast no light on either the correct market definition or the extent of service by potential "triggering" companies.

58. Even SBC's collocation data provided little in the way of useful information about actual deployment of mass-market switching. SBC readily conceded that the collocations it counted were not necessarily being used to provide mass-

[66] CA Hopfinger Direct, Attachment CH-3.

market switching—and therefore implicitly conceded that carriers had not necessarily equipped these collocations with the kind of concentration and backhaul equipment that would be needed to support UNE-L provision of mass-market services.

59. Moreover, the pattern of collocation did not support either SBC's MSA market definition or any suggestion of widespread competition for residential customers. In each of the states in which I examined SBC's data, there was an unsurprisingly high correlation between the number of collocators and the number of retail lines in the wire center. The vast majority of the collocations occurred in the large downtown wire centers in each MSA; relatively few collocators were present in the smaller, predominantly residential wire centers outside the city centers.

60. Table 9 below illustrates this result, using data from the Michigan state impairment proceeding. The table presents combined summary data for the seven MSAs for which SBC Michigan sought a finding of no impairment for mass-market switching. Each of the seven MSAs exhibited the same pattern of very few collocators in small wire centers and substantially more collocators in the largest urban wire centers.

**Table 9 – Collocations Relative to Wire Center Size for the Seven Michigan MSAs for Which SBC Sought a Finding of No Impairment**

| Number of Lines Per Wire Center | Number of Wire Centers | Number of Collocations | Number of Collocations Per Wire Center |
|---|---|---|---|
| 0 - 5,000 | 36 | 2 | 0.06 |
| 5,001 - 10,000 | 32 | 21 | 0.66 |
| 10,001 - 30,000 | 48 | 137 | 2.85 |
| 30,001 - 75,000 | 48 | 383 | 7.98 |
| 75,001 + | 5 | 50 | 10.00 |
| | | | |
| Total | 169 | 593 | |

61. In summary, as I have shown using the data from state impairment proceedings that I discuss above, the number of CLEC switches serving the MSA, the percentage of ILEC wire centers with CLEC collocations, the percentage of ILEC wire centers with ported numbers, and the number of CLEC NXX codes do not provide probative evidence of the actual deployment of mass-market switching.

### C. The Verizon Maps Do Not Demonstrate Actual Deployment of Mass-Market Switching

62. Despite the limited time available for review of the October 4th filings, I was able to perform a reality check on one of the other pieces of "evidence" that the ILECs have offered to support a finding of no impairment for mass-market switching—namely, the maps that Verizon provided as Attachment O, Maps A to its Comments. Verizon describes these maps as representing "the number of competitors that are serving *or could serve* in the MSA."[67] My own comparison

[67] Lataille Decl., ¶ 17 (emphasis added).

of the Map A for the Riverside – San Bernardino – Ontario MSA in California to the data in Verizon's own California trigger showing for that MSA suggests that the emphasis is very much on speculation about areas that competitors "could serve"—*if* they found extension of service to be in their economic interest.

63. A casual observer looking at the more recent Verizon map for this MSA would conclude that the Riverside, California area is a hotbed of switch-based competition for mass-market customers. Yet, in the California state impairment proceeding, Verizon itself admitted that is far from being true. In the rebuttal round of the California proceeding, Verizon's revised data showed that *only two switch-based CLECs (including cable carriers) provided mass-market service in the entire Verizon portion of the Riverside – San Bernardino – Ontario, CA MSA.* This claim was depicted in the "Verizon Base Case" map filed as part of Exhibit 6 to my October 4, 2004 declaration.[68]

64. To facilitate this comparison, Exhibit 9 to this Reply Declaration provides a side-by-side portrayal of Verizon's October 4th map for this MSA and the portion of my Verizon Base Case map (again, based on Verizon's own California state impairment filing) that represents the same MSA. The two maps show very different pictures of competition, indeed.

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[68] *See also* Verizon Comments, Attachment O, Map D (showing only two wireline competitors in the Riverside-San Bernardino-Ontario, CA MSA).

65. The reason for this discrepancy becomes obvious when one looks behind Verizon's Map A for the Riverside – San Bernardino – Ontario MSA at the other maps for that MSA that were also included in its Attachment O. Verizon's Map A purports to show "total competitor coverage," but in fact only shows that Verizon believes that these areas are physically close enough to a competitor's switch so that there is the potential for them to be served by that switch. The map provides no information about the location of customers actually served by those switches today. Moreover, the competitive switches identified by Verizon appear to be owned by wireless providers and cable companies as well as by UNE-L-based providers.

66. The accompanying Verizon maps reveal that when Verizon claims there are five or more competitors serving part of the MSA, the most likely explanation is that customers in that area have a choice of multiple wireless providers. In particular, if one compares Map C (wireless coverage by number of carriers) to Map A (total coverage by competitors), one sees that the two maps are strikingly similar, and that wireless carrier coverage must account for most of the total competitor coverage. As MCI has previously shown (and the Commission has previously concluded), wireless service is not comparable to traditional local exchange service, and therefore the presence of wireless carriers is not probative of whether competitive carriers are impaired in their ability to offer local exchange service in the absence of unbundled switching.

67. The Verizon maps for the remaining MSAs almost certainly provide equally little information about the extent of actual deployment of mass-market switching. For example, Verizon included maps identifying three or more competitors in several MSAs for which it did not seek a finding of no impairment in state proceedings.[69] Presumably, Verizon did not seek non-impairment findings for these MSAs because it did not have sufficient evidence to make even a *prima facie* case that three or more switch-based competitors were serving mass-market customers in the Verizon territories within those MSAs. At best, therefore, the Verizon maps represent a highly speculative view of the *potential* for deployment of CLEC switches to serve mass-market customers.

## IV. CONCLUSION

68. In the discussion above, I have shown that the ILEC data concerning actual deployment of mass-market switching cannot be taken at face value. When one looks behind the surface statistics, one finds very little evidence that switch-based CLECs are serving mass-market customers—especially residential customers.

69. My discussion has focused on evidence from the four state impairment proceedings in which I was directly involved in analyzing the ILECs' trigger showings. Exhibit 13 to this declaration (which provides a tabular summary of

[69] For the states of which I have personal knowledge, these MSAs include the Oxnard and Santa Barbara MSAs in California, the Dallas, Houston and College Station MSAs in Texas and the Chicago MSA in Illinois.

the analysis of the various trigger candidates identified in several state proceedings) shows that the conclusions I have reached based on data from California, Illinois, Michigan and Texas are not unique to those states.

70. This concludes my Reply Declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 14 October, 2004.

Terry L. Murray

Terry L. Murray

**REDACTED – FOR PUBLIC INSPECTION**

# MURRAY REPLY DECLARATION

## EXHIBIT 1

## (ELECTRONIC ONLY) SPREADSHEET TOOL SHOWING MSA-LEVEL TRIGGER ANALYSIS FOR SBC CALIFORNIA – SEE CD

## REDACTED – FOR PUBLIC INSPECTION

# MURRAY REPLY DECLARATION

## EXHIBIT 2

## (ELECTRONIC ONLY) SPREADSHEET TOOL SHOWING MSA-LEVEL TRIGGER ANALYSIS FOR VERIZON CALIFORNIA – SEE CD

**REDACTED – FOR PUBLIC INSPECTION**

**MURRAY REPLY DECLARATION**

**EXHIBIT 3**

**SUMMARY OF EVIDENCE CONCERNING COMPANIES THAT SBC COUNTED TOWARD THE RETAIL TRIGGER IN ILLINOIS**

REDACTED IN FULL

**REDACTED – FOR PUBLIC INSPECTION**

# MURRAY REPLY DECLARATION

## EXHIBIT 4

## (ELECTRONIC ONLY) SPREADSHEET TOOL SHOWING WIRE CENTER AND MSA-LEVEL TRIGGER ANALYSES FOR SBC ILLINOIS – SEE CD

**REDACTED – FOR PUBLIC INSPECTION**

# MURRAY REPLY DECLARATION

## EXHIBIT 5

## SUMMARY OF EVIDENCE CONCERNING COMPANIES THAT SBC COUNTED TOWARD THE RETAIL TRIGGER IN MICHIGAN

**REDACTED – FOR PUBLIC INSPECTION**

In Michigan PSC Case No. U-13796, SBC claimed to have identified eleven companies as counting toward the retail trigger in the seven Michigan MSAs in which it sought a finding of no impairment. These companies are: AT&T, Choice One Communications, Comcast, Climax (shown as CTS Telecom), KMC Telecom, LDMI (with Mpower), MCI (shown as WorldCom), McLeodUSA, Mich Tel, TDS and XO. I discuss each of the companies in this exhibit, focusing on attributes relevant to the determination of whether the competitor should count toward the retail trigger for mass-market switching.

**AT&T**

Although AT&T provides local exchange service to both residential and business mass-market customers in Michigan, it provides residential service exclusively via UNE-P.[1] In response to the Michigan PSC Staff's First Data Request, AT&T indicated that it has ***BEGIN PROPRIETARY END PROPRIETARY*** that serve customers in Michigan. AT&T stated that those switches serve a total of ***BEGIN PROPRIETARY END PROPRIETARY*** business customers spread across ***BEGIN PROPRIETARY END PROPRIETARY*** SBC wire centers, with a maximum in any one wire center of ***BEGIN PROPRIETARY END PROPRIETARY*** business lines served via UNE-L. AT&T also explained that it serves ***BEGIN PROPRIETARY END PROPRIETARY*** "Prime family" voice-

[1] AT&T's response to ACN/Z-Tel/Talk Data Request 1.01.b.i and 1.02 confirmed that AT&T does not use UNE-L to provide service to residential customers. This data response, and all of the other CLEC data responses cited in this Exhibit, are part of the record in Michigan PSC Case No. 13796.

grade-equivalent lines using those switches, but that the "vast majority" of those customers "are served by high-capacity lines" instead of DS-0 lines.[2]

Therefore, I eliminated AT&T from the analysis based on my trigger screen that determines whether a carrier offers retail local exchange service to residential mass-market customers.

SBC's data, which I have used throughout my "trigger" analysis, confirm that AT&T's mass-market UNE-L entry is minimal. SBC identified a total of ***BEGIN PROPRIETARY END PROPRIETARY*** supposed mass-market loops for AT&T in ***BEGIN PROPRIETARY END PROPRIETARY*** wire centers in the SBC seven MSAs. The supposed AT&T mass-market loops range from a minimum of ***BEGIN PROPRIETARY END PROPRIETARY*** mass-market loops per wire center in which SBC found AT&T to have any mass-market loops. AT&T explained that these business loops fall into two categories: loops still in service as part of a "legacy" failed business plan that AT&T is no longer actively pursuing and loops used to provide incidental service to enterprise-level business customers.[3] Therefore, AT&T fails the "active and continuing" screen, as well.

Even if I had not eliminated AT&T on the basis of the residential screen, AT&T would have dropped out of ***BEGIN PROPRIETARY END PROPRIETARY*** based on the 1% market share screen. There is no wire center in which AT&T's market share is as high as ***BEGIN PROPRIETARY . END PROPRIETARY***

[2] AT&T response to Staff's First Discovery Request at 5-6.

[3] Michigan PSC Case No. U-13796, Rebuttal Testimony of Scott L. Finney, February 10, 2004, at 8-11.

**Choice One**

Choice One's Web site indicates that it primarily markets to business customers. For example, the first paragraph in the page on which the company introduces and describes itself (http://www.choiceonecom.com/ourcompany/) states that Choice One serves "small and medium sized companies in the Northeast and Midwest United States" and that "[w]e have chosen to target small- and medium sized-business because they are typically underserved by the incumbent local exchange provider (Baby Bell or Local Independent)."

A Choice One general manager recently confirmed the logic of avoiding the residential market entirely "because there is not a lot of room for growth and it is a huge drain on resources."[4]

However, a January 8, 2004 press release on the site also notes that the company is introducing residential service in its New York service areas. Choice One's reply to Staff's First data request indicates that Choice One has one switch serving loops in ***BEGIN PROPRIETARY END PROPRIETARY*** Michigan wire centers, with ***BEGIN PROPRIETARY END PROPRIETARY*** residential and ***BEGIN PROPRIETARY END PROPRIETARY*** business loops; however, the residential loops may well be residual lines from its merger with U.S. Xchange and entirely unrelated to Choice One's current business plan for Michigan.

SBC's data confirm that Choice One's supposed mass-market UNE-L entry is minimal. SBC identifies a total of ***BEGIN PROPRIETARY END PROPRIETARY*** supposed mass-market loops for Choice One in ***BEGIN

[4] http://milwaukee.bizjournals.com/milwaukee/stories/2003/06/02/focus2.html

**PROPRIETARY END PROPRIETARY*** wire centers in the SBC seven MSAs. Choice One's supposed mass-market loops in those wire centers range from a minimum of ***BEGIN PROPRIETARY END PROPRIETARY*** mass-market loops per wire center in which SBC found Choice One to have any mass-market loops.

SBC's reported total mass market loops for Choice One are only ***BEGIN PROPRIETARY END PROPRIETARY*** of the total loops that Choice One reported in response to Staff's First data request. Thus, it appears that the level of "mass market" customers Choice One serves is close to incidental to its overall operation and may well be merely lines that it acquired in a merger. Therefore, the evidence suggests that Choice One is not an "active and continuing" provider of mass-market services in Michigan and certainly is not actively serving residential customers. MCI's Opening Brief "screened out" Choice One on both bases.

Choice One also drops out of the analysis for ***BEGIN PROPRIETARY END PROPRIETARY*** SBC wire centers based on the 1% market share screen.

**Comcast**

Comcast is a traditional cable company that offers telephone service in some, but not all, parts of its existing cable footprint. Comcast's limited geographic scope is ample reason to disqualify the company as a trigger. Moreover, Comcast does not make any use of UNE-L to supplement its own cable loop plant and does not offer its facilities to other potential market entrants.[5] Thus, Comcast's actual deployment does not demonstrate that any other companies could enter SBC's Michigan service territory and serve mass-market customers without access to UNE switching.

[5] SBC's own data show ***BEGIN PROPRIETARY . END PROPRIETARY***

Moreover, it is unclear that any cable telephony offering can be considered to be entirely comparable to SBC's retail voice service in terms of cost, quality and maturity. Backup power issues are a concern: as I documented in an Exhibit to my Michigan PSC Rebuttal Testimony, Comcast's own Web site indicates that its cable telephony offering has limited backup power.

Cable companies such as Comcast typically initiate local exchange service when they already have an embedded base of facilities constructed for another purpose and an embedded base of video and cable modem customers. The ability to add telephony to an existing cable network does not indicate that competitors without the "first-mover" advantage of a cable franchise would be able to compete with the ILEC without access to unbundled local switching.

Total lines in service and/or market share for a cable telephony provider using its own loop plant also do not provide useful evidence that the national finding of operational impairment has been overcome. Only UNE-L providers that pass this screen can provide such evidence because only these companies deal with hot cuts and the other operational issues associated with the attempt to use SBC facilities in a UNE-L arrangement to serve mass-market customers.

There are also signs that Comcast may not be aggressively pursuing traditional phone service at all. For example:

> Comcast will reverse AT&T Broadband's aggressive telephony acquisition policies and implement its own corporate policy of trialing and then deploying voice over IP services, a senior executive said today. AT&T enlisted more than 1 million telephony customers using conventional constant bit rate [CBR] phone technology. Comcast will maintain these customers, but it won't go looking for more, John Alchin, Comcast's executive vice

> president and treasurer, said during a luncheon presentation at the Warburg Media day in New York City. 'There is an element of cutback on telephony', said Alchin, discussing Comcast's plans to spend more than $2 billion to upgrade AT&T Broadband plant next year. 'While we haven't yet shared with you the details of the capital plans for 2003, you should not expect us to take the telephony product into a whole host of new markets. It will be a case of supporting the product where it is today without expanding.'[6]

Also,

> As a result of the Company's reduced marketing efforts and focus on telephone service profitability, Comcast now expects to lose approximately 175,000 Comcast Cable phone customers this year, a modest adjustment from the original expectation of up to a 150,000 telephone customer decline [announced in the February 27, 2003 guidance].[7]

For these reasons, I disqualified Comcast from counting toward the retail trigger.

**Climax/CTS Telecom**

Climax Telephone Company (a wholly owned subsidiary of CTS Communications) operates as both an ILEC and a CLEC in Michigan. In 1996, Climax became "the first case in which a licensed incumbent provider of basic local exchange

[6] "Comcast Curtailing AT&T Telephony Deployments," Dec. 12, 2002, *Telephony Online*, at http://telephonyonline.com/ar/telecom_comcast_curtailing_att/index.htm

[7] Comcast Third Quarter 2003 Earnings Release, October 30, 2003 (http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=464588&).

Other articles about Comcast's less-than-aggressive approach to digital telephone services include: Josh Long, "Marketing for Voice Put on Hold, Telephony Not a Priority for Comcast in 2003," *Xchange*, 2/1/03 (http://www.x-changemag.com/articles/321window2.html); "Comcast Phone Falling Fast," *Telephony Online*, August 1, 2003, http://telephonyonline.com/ar/telecom_comcast_phone_falling/index.htm; "Cable Telephony Surging," *Telephony Online*, November 26, 2003, http://telephonyonline.com/ar/telecom_cable_telephony_surging/index.htm.

service has filed an application to provide service in another licensed incumbent provider's territory."[8]

Since then, Climax, by its own report, has not grown beyond ***BEGIN PROPRIETARY END PROPRIETARY***, with which it claims to serve a total of ***BEGIN PROPRIETARY END PROPRIETARY*** analog loops.[9] Because Climax relies entirely on ILEC-provided switching, I eliminated Climax as an ILEC affiliate.

Climax also stated that it does not actively market its service to either business or residential mass-market customers.[10] According to Climax, it serves only ***BEGIN PROPRIETARY END PROPRIETARY*** residential customers from its switch.[11] Thus, MCI's Opening Brief disqualified Climax from being counted toward the retail trigger because it does not actively use UNE-L to serve the mass-market customers.

SBC's data indicate that Climax's supposed mass-market UNE-L entry is minimal. SBC identified a total of ***BEGIN PROPRIETARY END PROPRIETARY*** supposed mass-market loops for Climax in ***BEGIN PROPRIETARY END PROPRIETARY*** wire centers within MSAs in which SBC is seeking a finding of no impairment for mass-market switching. The supposed Climax mass-market loops in those wire centers range from a minimum of ***BEGIN PROPRIETARY END PROPRIETARY*** mass-market loops per wire center in which SBC found Climax to have any mass-market loops. If I had not eliminated Climax

[8] Order Approving Application, Case No. U-11143, 10/7/1996, at 2.

[9] Climax Responses to ACN/Z-Tel/Talk, requests 1.01 and 1.03, respectively.

[10] Climax Responses to ACN/Z-Tel/Talk, request 1.07.

[11] Climax Response to ACN/Z-Tel/Talk, request 1.02.

as an ILEC affiliate or because it does not serve all mass-market customers using UNE-L, I would still have disqualified Climax from counting toward the retail trigger in all but ***BEGIN PROPRIETARY END PROPRIETARY*** SBC wire centers based on the 1% market share screen.

**KMC Telecom**

KMC's supplemental response to MCI's First Set of Discovery speaks for itself:

> KMC states that it should not be considered a Self Provider of analog Plain Old telephone Service ("POTS") to the mass market segment utilizing our switches in Michigan. At this time, the principal business of KMC is to serve Enterprise customers and not Mass Market customers in the areas in Michigan where our switches are located. Today, KMC actively markets only to medium and large business enterprise customers, who have a high demand for a variety of sophisticated data-centric telecommunications services and solutions. KMC's success had been in serving Enterprise customers and not Mass Market customers.
>
> Today, KMC actively seeks to serve customers who plan to purchase digital services at capacities that justify the use of DS1-level loops. ....
>
> There are two specific instances in which KMC may offer DS0 level service while serving Enterprise customers. First, existing Enterprise customers who order additional voice services from KMC may, on occasion, be at capacity on their existing DS1 facility, necessitating the provisioning of individual DS0 level facilities at an existing location. The second instance occurs when a prospective or existing customer wishes to include other locations into their service package, but those locations do not have sufficient volume to justify a full DS1. KMC would also provision individual DS0s to such locations.

KMC is clearly not an active participant in Michigan for mass-market customers and should not be counted as a triggering company for that reason.

KMC provides an illustration of how easily a handful of UNE-L services provisioned to an apparent mass market location (according to SBC) can be misinterpreted as mass-market entry. Instead, such loops may be merely the byproduct of an abandoned strategy or incidental requirements of service to an enterprise- market customer.

SBC's data further confirm that KMC's mass-market UNE-L entry is minimal and incidental. SBC identified a total of ***BEGIN PROPRIETARY END PROPRIETARY*** supposed mass-market loops for KMC in ***BEGIN PROPRIETARY END PROPRIETARY*** wire centers within Michigan MSAs for which SBC seeks a finding of no impairment. The supposed KMC mass-market loops range from a minimum of ***BEGIN PROPRIETARY END PROPRIETARY*** mass-market loops per wire center in which SBC found KMC to have any mass-market loops.

KMC does not achieve ***BEGIN PROPRIETARY END PROPRIETARY*** market share in any wire center based on SBC's data. Thus, if it had not been eliminated as failing the active market participant screen, it would fall out ***BEGIN PROPRIETARY END PROPRIETARY*** from the triggering CLEC list based on the 1% market share screen.

**LDMI**

LDMI is not currently offering service to mass-market customers and does not intend in the future to market to mass-market customers for services provided over its own switch.[12]

Instead of being an active participant using UNE-L for mass-market customers, LDMI serves a smattering of mass-market UNE-L customers that it inherited from bankrupt CLEC Mpower. LDMI implied that Mpower's bankruptcy and its pursuit of mass-market customers may be related.

> LDMI, the identified competitive switch provider, is not actively providing voice service to mass market customers in the market, and has not been actively providing voice service to mass market customers in the market. The lines noted were provisioned by the previous CLEC, Mpower, from whom LDMI purchased the switch, collocations and customers noted in this spreadsheet. It should be noted that Mpower went bankrupt in the process.[13]

Thus, LDMI cannot be considered an active participant for mass-market customers and should be eliminated on that basis. LDMI's business focus is demonstrated on the "About LDMI" section of its web page, which begins: "Founded in 1992, LDMI has emerged as a world-class, full-service regional telecommunications company serving thousands of businesses in the Great Lakes Region." One of the five primary headings on that page is **"We're All for Business."**

That focus is confirmed in LDMI's response to Staff's First data request, in which LDMI indicates that it serves ***BEGIN PROPRIETARY END PROPRIETARY***

[12] LDMI Response to ACN, Z-Tel & Talk America data request 1.01, B-i.

[13] Letter from Gary L. Field to Mr. Steven D. Hughey, Assistant Attorney General, Michigan Public Service Commission, 11/26/03.